

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA No.GA/1/2025
In
CS 68 of 2025
RADHIKA KEJRIWAL
VS.
SHYAM SUNDAR MODI & ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 17th July, 2025.

Appearance:
Mr. Rajeev Kumar Jain, Adv.
Ms. Laila Khatun, Adv.
Ms. Yamini Mahawar, Adv.
For the plaintiff/petitioner.

Mr. Moti Sagar Tiwari, Adv.
Mr. Sailendra Kumar Tiwari, Adv.
Ms. Muskan Jalan, Adv.
For the defendants/respondents.

The Court:-Affidavit of service filed in Court today is taken on record.

This is an application by the plaintiff in a partition suit, inter alia, for appointment of a Commissioner and orders of injunction.

The relationship between the plaintiff and the defendant nos. 1 and 4 are the brothers and sister. The defendant nos. 2 and 3 are the wife and daughter of the deceased brother of the plaintiff.

It is not in dispute that the suit property belongs to the grandmother of the plaintiff and the defendant nos. 1 and 4 and the great grandmother of the

defendant no.3 and grandmother-in-law of the defendant no.2. It is also not in dispute that the second floor of the building in the suit property was gifted by the grandmother to the defendants and/or their predecessors-in-interest. The grandmother has also left behind a Will by which she has bequeathed the vacant land available at the suit property to the defendants and/or their predecessors-in-interest. So far as the ground, first, third and fourth floors of the building are concerned, the same have been bequeathed under the Will to the mother of the plaintiff and the defendant nos. 1 and 4 as also the mother of the predecessors-in-interest of defendant nos. 2 and 3.

The Will has been probated. Manjulata Modi the mother of the defendant nos. 1 and 4 and the mother of the predecessors-in-interest for defendant nos. 2 and 3 has died intestate on 31st July, 2019. The plaintiff is, therefore, claiming 1/4th share in the ground, first, third and fourth floor of the building situate at the suit property. The share of the plaintiff and the defendants cannot be disputed as the mother of the plaintiff and the defendant nos. 1 and 4 and the mother of the predecessors-in-interest of the defendant nos. 2 and 3 and the father of the plaintiff and the defendant nos. 1 and 4 and the father of the predecessor-in-interest of defendant nos.2 and 3 were on the death of Manjulata Modi, got 1/5th share each. After the death of husband of Manjulata Modi, his 1/5th share again devolved to his son, daughter, wife and daughter of the predeceased son. Thus, the plaintiff, the defendant nos. 1 and 4 are each and the defendant nos. 2 and 3 jointly have 1/4th share in the ground, first, third and fourth floor of the building situate at the suit property.

It is the case of the plaintiff/petitioner that the ground, first, third and

fourth floor of the building in question is fully tenanted and the rents and profits therefrom are collected by the defendants either jointly or severally. There is, however, a dispute regarding the character of the fourth floor as according to the defendants, it is roof while the plaintiff says that there are construction on the roof.

Be that as it may, in order to effectively adjudicate the suit wherein the shares are not in dispute, it is necessary to ascertain who are the tenants and/or occupants and what are rents and/or occupational charges paid by such tenants and/or occupants at the ground, first, third and fourth floor, if any and to whom the same is paid.

In the aforesaid facts and circumstances, the shares of the parties so far as the ground, first, third and fourth floor are declared to be $1/4^{\text{th}}$ each for plaintiff, defendants nos.1 and 4 and $1/4^{\text{th}}$ jointly for defendant nos.2 and 3.

Mr. Koushik Chowdhury, learned Advocate and a Member of the Bar Library Club, High Court, Calcutta, is appointed as Special Officer to visit the suit premises situate at 71, Maharshi Devendra Road, Kolkata 700007 and to find out as to who are the tenants and occupants and rent or occupational charges paid by them in respect of the portions of ground, first, third and fourth floor of the said premises being occupied by them along with area occupied by each tenant and/or occupant. Learned Special Officer shall also ascertain who amongst the parties are receiving the rent and occupational charges at the present from the tenants and occupants of the ground, first, third and fourth floor of the premises in question and from which date.

Learned Special Officer shall file his report on 7th August, 2025 when the

matter is made returnable.

Considering the suit premises being situated at Burrabazar, the commercial hub of the city and there are instances of change in tenancy or occupancy by payment of huge salami, the parties are also restrained by an order of temporary injunction from changing the nature and character of the suit premises and/or inducting any new tenants and/or occupants until further orders. The injunction is necessary considering the balance of convenience and inconvenience and apprehension of multiplicity of judicial proceedings.

Learned Special Officer shall be paid an initial remuneration of Rs.20,000/- to be borne equally as per the share of the parties.

(ARINDAM MUKHERJEE, J.)